IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JERRY McDANIEL — PLAINTIFF

vs. — Civil Action No. 1:95cv32-D-D

THE CITY OF IUKA, MISSISSIPPI, MAYOR DAVID L. NICHOLS, ALDERMAN JAMES BATES, ALDERMAN HERBERT BOOKER, ALDERMAN BESS YOUNG — DEFENDANTS

MEMORANDUM OPINION

The plaintiff Jerry McDaniel served as Public Works Director for the City of Iuka, Mississippi. Amid allegations of misconduct made against the plaintiff, the Iuka Board of Aldermen terminated the plaintiff's employment on March 1, 1994. The plaintiff then filed this action, charging the defendants with violation of his rights under the United States Constitution as well as violations of Mississippi state law. Presently before the court is the motion of the defendants for the entry of partial summary judgment on their behalf. Finding the motion well taken, the same shall be granted.

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving

party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. PROCEDURAL DUE PROCESS

An individual's "right to hold specific private employment and to follow a chosen profession free from government interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment." Vander Zee v. Reno, 73 F.3d 1365, 1370 (5th Cir. 1996) (quoting Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411, 3 L.Ed.2d 1377 (1959)); see also Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923) (noting "liberty" within the meaning of Fourteenth Amendment "denotes not merely the freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life . . ."). However, injury to reputation or the impairment of future employment prospects fails to independently state constitutionally cognizable claims. Siegert v. Gilley, 500 U.S. 226, 233-34, 111 S.Ct. 1789, 1793-94, 114 L.Ed.2d 277 (1991); State of Texas v. Thomson, 70 F.3d 390, 392 (5th Cir. 1995). When interrelated, they can in tandem create a claim:

> [D]amage to an individual's reputation as a result of defamatory statements made by a state actor, accompanied by an infringement of some other interest, is actionable under § 1983.

Thomson, 70 F.3d at 392 (citing Paul v. Davis, 424 U.S. 693, 710-12, 96 S.Ct. 1155, 1164-66, 47 L.Ed.2d 405 (1976)). In this case, the plaintiff claims that he was denied a meaningful name-clearing hearing in violation of this due process right to pursue his chosen profession. In order to establish his claim, Mr. McDaniel must prove:

1) that he was discharged;
2) that defamatory charges were made against him in connection with the discharge;
3) that the charges were made public;
4) that the charges were false;
5) that he requested a name-clearing hearing in which to clear his name;
6) that the request was denied; and
7) that no meaningful public hearing was conducted before the discharge.

Gillum v. City of Kerrville, 3 F.3d 117, 121 (5th Cir. 1993); Arrington v. County of Dallas, 970 F.2d 1441, 1447 (5th Cir. 1992); Rosenstein v. City of Dallas, 876 F.2d 392 (5th Cir. 1989). In their motion for summary judgment, the defendants charge that the plaintiff cannot establish several of these elements.

1. THE DEFAMATORY NATURE OF THE STATEMENTS MADE

Initially, the defendants charge that the plaintiff cannot demonstrate that the statements made concerning him were sufficiently defamatory to give rise to relief under this theory. The defendants argue to the court that a prerequisite to a finding of a protected liberty interest is the plaintiff's showing that the charges against him:

> arise to such a level that they create a "badge of infamy" which destroys the claimant's ability to take advantage of other employment opportunities. Additionally, the claims must be false and the claimant must show that damage to his reputation and employment opportunities has in fact occurred.

Farias v. Bexar County Bd. of Tr., 925 F.2d 866, 877-78 (5th Cir. 1991) (quoting Evans v. City of Dallas, 861 F.2d 846, 851 (5th Cir. 1988)). However, the Fifth Circuit has recognized that a discharged employee's liberty interest is also infringed when he is denied the opportunity to clear his name of "charges that blacken his reputation, **in addition to** charges that foreclose future employment opportunities." Rosenstein v. City of Dallas, 876 F.2d 392, 398 n.10 (5th Cir. 1989) (emphasis added). Charges, made in the course of termination from public employment, which blacken one's name, "but do not necessarily cause the loss of employment opportunities, can constitute part of a claim for a name-clearing hearing." Rosenstein, 876 F.2d at 398 n.9. Furthermore, the charges need not actually cause the discharge, but must only be "connected with the discharge." Id. n.3 (citing Owen v. City of Independence, 445 U.S. 622, 633 n.13, 100 S. Ct. 1398, 14406 n.13, 63 L.Ed.2d 673 (1980)). The "connection" to loss of employment impinges upon a person's liberty interest, and thereby makes the claim actionable under § 1983.

In any event, it does not appear to this court that the plaintiff can even establish a loss of reputation in this case. In his deposition, the plaintiff admitted that he is unable to produce evidence that any person holds him in a lesser regard in light of the facts surrounding this case. As well, he can

produce no evidence that any particular employer has refused him employment because of the press reports concerning his termination by the City of Iuka.

> Q: . . . Do you know of anyone who has refused to give you a job because of what they read in any of these newspapers about you?
>
> A: As of now, no sir.
>
> . . .
>
> Q: Do you know of anyone specifically in the community who has lost esteem for you because of anything that happened to you in Iuka?
>
> A: As of right now I don't, but I probably could, you know, come up with someone.
>
> . . .
>
> Q: Well, if you can't think of anyone now, is it safe to say that it really hadn't had any effect on you as far as what people are saying or thinking about you?
>
> A: Yes.

Deposition of Jerry McDaniel, p. 83-84. It is the plaintiff's position that he need not put on particular proof of loss of reputation, in light of the fact that the statements made about him involve allegations of illegal conduct which will necessarily cause loss of reputation. Allegations of illegal conduct can indeed obviate the need to provide proof of loss of reputation in a state court action for defamation. See Restatement (Second) of Torts, § 571. Nonetheless, such is not the case for his constitutional claim under § 1983:

> Imputing criminal behavior to an individual is generally considered defamatory *per se*, and actionable without proof of special damages.
>
> Respondent brought this action, however, not in [state court], but in a United States District Court for that State. He asserted not a claim for defamation under the laws of [that state], but a claim that he had been deprived of rights secured to him by the Fourteenth Amendment of the United States Constitution. Concededly if the same allegations had been made about respondent by a private individual, he would have nothing more than a claim for defamation under state law. But, he contends, since petitioners are [state actors], his action is thereby transmuted into one for deprivation by the State of rights secured under the Fourteenth Amendment.

Paul v. Davis, 424 U.S. 693, 697, 96 S.Ct. 1155, 1159, 47 L.Ed.2d 405 (1976). While this action may be a distant relative of the common law tort of defamation, it is nevertheless conceptually distinct. This court is aware of no decision, and the plaintiff has not directed the court to any, where a court has applied the concept of defamation *per se* within the context of a claim arising under the Fourteenth Amendment due process claim. As the defendants have carried their burden in this matter

and the plaintiff is unable to produce admissible evidence of a loss of reputation in this case, summary judgment is appropriate on this claim. In light of this fact, the court need not address whether the charges against the plaintiff were in fact false, or whether the appeal hearing given the plaintiff was sufficient to constitute a "name clearing hearing" as required by the Fourteenth Amendment.

III. FIRST AMENDMENT CLAIMS

The plaintiff also claims that the defendants violated his rights under the First Amendment by firing him. More specifically, he asserts that:

> [t]he reason the plaintiff was fired and an employee hired was that the plaintiff had not been a close associate or political supporter of Aldermans Bates, Booker, and Young. Said discharge violated the plaintiff's rights under the United States Constitution Amendment One.

Plaintiff's Complaint, ¶ XVII. In addressing a claim under the First Amendment, this court must first determine what category of First Amendment employment cases by which the present situation will be governed. Kinsey v. Salado Indep. School Dist., 950 F.2d 988, 993 (5th Cir. 1992). There have been three types of cases decided under the First Amendment in this vein: 1) cases involving only speech; 2) cases involving only political association; and 3) cases involving both speech and political association. Kinsey, 950 F.2d at 992. In the case at bar, the plaintiff claims that he was fired for his political non-association with the defendants Bates, Booker and Young. There is nothing before the court to indicate that this case involves any type of protected speech, and therefore this cause falls under the cases involving only political association.

The primary question to be determined with regard to this type of First Amendment claim is the motivation of the defendants in terminating the plaintiff's employment. Whether a substantial or motivating factor in his termination was his political affiliation is question of fact. Normally, the determination of a "substantial" or "motivating" factor renders these types of cases inappropriate for summary judgment. Brawner v. City of Richardson, 855 F.2d 187, 193 (5th Cir. 1988). It is important to remember, however, that the reason for the termination must be political in order to violate the First Amendment - it must be based on the employee's allegiance to a political party, a political candidate, or political belief. Correa v. Fischer, 982 F.2d 931, 934 (5th Cir. 1993). In the

case at bar, there does not appear to be any evidence that the termination of the plaintiff was motivated by the plaintiff's political support or non-support of a particular aldermanic or mayoral candidate. Indeed, the plaintiff admitted as much in his deposition:

> Q: Well, do you believe that you were fired because you weren't a close associate or political supporter of Mr. Bates?
>
> A: I was fired, sir, because they wanted to replace me with their friend.
>
> . . .
>
> Q: It had nothing to do with political support, just friendship?
>
> A: As far as I know.

Deposition of Jerry McDaniel, p. 92, 94. In his submissions to the court on this issue, the plaintiff's allegations fare no better, for he states "it is clear that the charges made against the plaintiff were merely a pretext to the Aldermen's wishes to hire a friend (McNeeley) to the position of director of City Works." The plaintiff's analysis then somehow turns this hiring of friendship into one based upon political support or non-support. The undersigned declines to make such a leap. Nothing in the record indicates that the plaintiff possesses admissible evidence in support of this claim which would lead a reasonable juror to find in his favor. There is no genuine issue of material fact in this matter and the defendants are entitled to a judgment as a matter of law on this claim.

CONCLUSION

There is no genuine issue of material fact as to these two claims of the plaintiff, and the defendants are entitled to a judgment as a matter of law on these claims. The motion of the defendants for the entry of partial summary judgment in this case shall be granted.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of April, 1996.

_____
United States District Judge

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the defendants for the entry of partial summary judgment is hereby GRANTED;

2) the plaintiff's claim for violation of his Fourteenth Amendment right to a "name clearing hearing" as required by procedural due process is hereby DISMISSED; and

3) the plaintiff's claim for violation of his First Amendment right to freedom of association is hereby DISMISSED.

SO ORDERED, this the ___ day of April, 1996.

_____
United States District Judge